

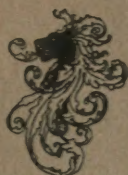
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Aylesworth, (Sir) Allen Bristol

Paper combine inquiry.

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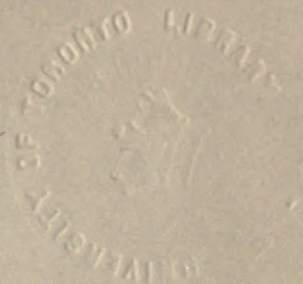


1901.

**Argument by Mr. A. B.
Aylesworth, K.C., be-
fore Royal Commission**

Published by the Canadian
Press Association, Toronto.

Paper Combine Commission



Being an investigation into an alleged combine among
the Papermakers of Canada, held under authority
of an Order-in-Council, dated April 25th,
1901. Judge Taschereau, Com-
missioner.

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CANADIAN PRESS ASSOCIATION.

(Established 1859.)

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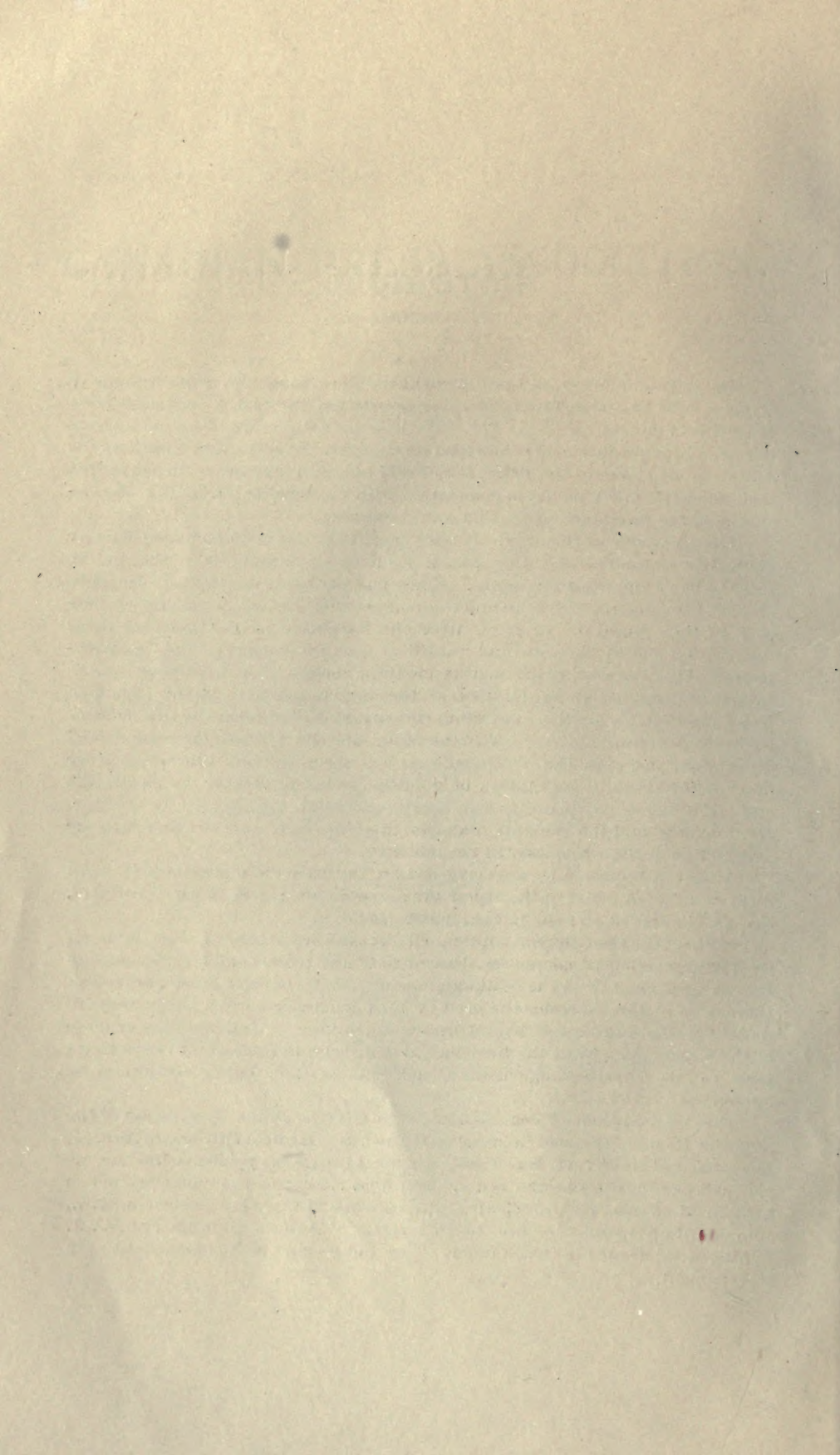
The judicial inquiry into the alleged combine among the papermakers of Canada, held by Judge Taschereau during the present year is important from several standpoints. It is the first time that an association of manufacturers has been brought into court to defend its conduct. It is the first time that the anti-combine clause of the Tariff Act of 1897 has been invoked. It has settled and will settle many points in connection with the legality of similar associations and the procedure under this particular act.

The case arose in this way. In February, 1900, the manufacturers of paper formed an association and this was immediately followed by a rise in the price of news and printing papers. A few months later, the Eddy Paper Mills at Hull were destroyed by fire and the competition among papermakers was still further lessened. In May, 1900, the Executive of the Canadian Press Association met in Toronto and passed a resolution condemning the papermakers' actions in raising prices and creating certain discriminations in the matter of freights. In March, 1901, at the annual meeting of the Canadian Press Association, another resolution was passed calling upon the Government to investigate the Papermakers' Association and its alleged oppressions and discriminations. As the papermakers took no notice of these mutterings of a coming storm, a deputation of publishers visited Ottawa on April 10th and laid a formal complaint before the Government, represented by the Hon. Mr. Fielding and the Hon. Mr. Paterson, a *prima facie* case was shown to the satisfaction of these members of the ministry.

After consideration by the Government, an Order-in-Council (dated April 25th) was issued under authority of the anti-combine clause of the Tariff Act, Sec. 18, chapter 16, 60 and 61, Vic., which reads :

"Whenever the Governor-in-Council has reason to believe that with regard to any article of commerce, there exists any trust, combination, association or agreement of any kind among manufacturers of such article, or dealers therein, to unduly enhance the price of such article, or in any other way to unduly promote the advantage of the manufacturer or dealers at the expense of the consumers. Then the Governor may direct a Commission to issue to report to the Government whether such combination, trust, association or agreement exists."

The Order-in-Council commissioned His Honor Judge Taschereau of the Superior Court of Quebec, to investigate the case. He held sittings in Toronto, Montreal and New York, when evidence was taken from publishers on the one side and papermakers on the other. The final sitting of the commission was held in Montreal, on July 30th and 31st, when Mr. A. B. Aylesworth, K.C., summed up the case against the Papermakers' Association, and Mr. W. J. White, K.C., argued in their favour. The Judge will make his report to the Government.



Summary of Mr. Aylesworth's Argument.

1. It is conceded that there was an Association of Papermakers and the actual document of agreement was produced, signed by twenty-six papermakers. It was an association to control prices as shown by this agreement and by the minutes of the meetings held subsequently. THEREFORE THERE WAS A COMBINE. There was a penal sum of \$500. paid in by each member to show his good faith, and fines of various size were to be levied for each infraction. Further, the evidence of the papermakers (Mr. Barber and Mr. Macfarlane) showed that they believed that the association had no other object than the control of prices.

2. The combine was a combine which "UNDULY ENHANCED PRICES." For years prior to February, 1900, the price of paper had been steadily declining owing to improvements in machinery and manufacturing and to the substitution of wood pulp for rags. The testimony of one papermaker (Mr. Woodruff) shows that previous to February, 1900, the trade was in a good, healthy condition and there was no undue depression in prices. Just previous to that date news print was offered at from \$2.00 to \$2.20 per hundred pounds. The association was formed in February and the price, without reason of any kind, was advanced to \$2.50, the terms of payment were shortened, and discrimination was made in freights. In January, 1900, paper was bought at less than \$2.00. After the formation of the association in February, it was \$2.50. Some contracts for news print in sheets were advanced from \$2.10 to \$2.75. Book and other printing papers were similarly advanced. In May, 1899, a large firm made a five years' contract with the Montreal "Star" to supply news print at \$1.90, showing paper could be made at that price. There was no advance in raw material or wages which would justify such an advance as subsequently occurred.

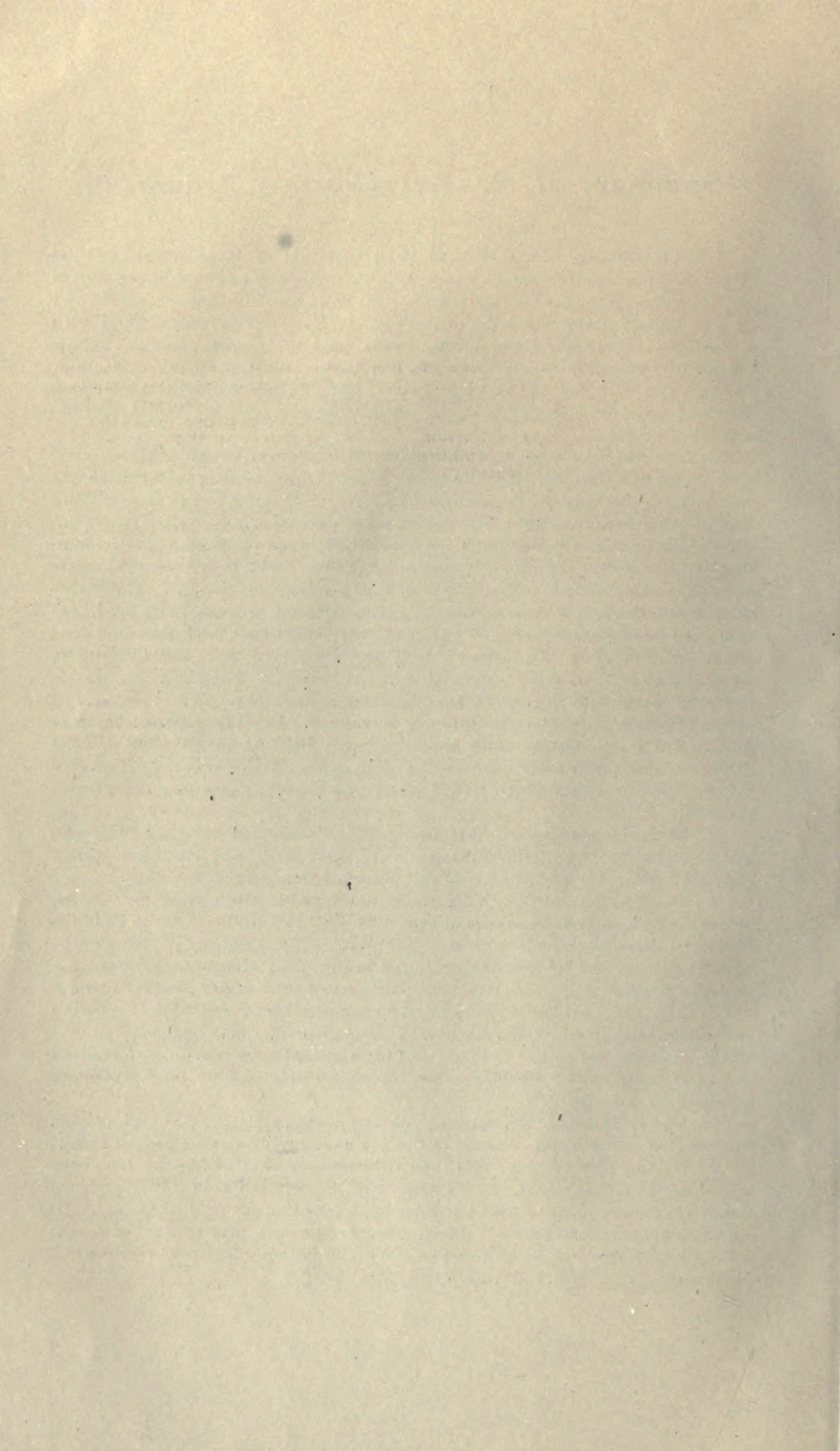
3. The evidence showed that the combine extended to many firms who had not actually deposited the penal sum of \$500. with the Treasurer. They nearly all worked in the same way and observed the association prices.

4. During 1900 and 1901, high grade news print was offered by United States makers to Canadian consumers at \$1.80 at the mill or equal to \$2.01 delivered to Canadian papers without the duty. Other printing papers were so high in Canada and so low in the United States, that Canadian printers imported a great deal of the better grades in spite of the duty of 25 and 35 p.c.

5. The only evidence offered by the papermakers concerning the cost of production was given by Mr. Barber, of Georgetown, a man with a small mill and a man who had to buy his pulp and his fibre and thus was not in a position to manufacture advantageously. Yet he placed the cost at only \$1.94 per hundred for news print.

6. The evidence of Mr. Gillean, of the Canada Paper Co and others, showed that paper could be made in Canada as cheaply as in the United States.

7. On the 10th of May, 1901, after this commission of inquiry had been issued by the Government, the Papermakers' Association voluntarily reduced the price of news print to \$2.37½. Since that date there is some appearance of a further reduction to \$2.25. This voluntary reduction, after public agitation shows that the protection afforded by the tariff on paper had been used by the papermakers to UNDULY ENHANCE the price of paper.



ARGUMENT BY MR. A. B. AYLESWORTH, K.C., BEFORE THE ROYAL
COMMISSION TO INVESTIGATE THE PAPER-
MAKERS' ASSOCIATION.



The first consideration which, it seems to me, important to ask Your Lordship's attention to in connection with this Inquiry is the provision of the Statute under which the Commission issued. Section 18 of the Act 60,61 Victoria, Chapter 16 provides the circumstances under which a Commission of this character should issue, and the scope of the Inquiry. "Whenever the Governor in Council has reason to believe that with regard to any article of commerce, there exists any trust, combination, association or agreement of any kind among manufacturers of such article, or dealers therein, to unduly enhance the price of such article, or in any other way to unduly promote the advantage of the manufacturer or dealers at the expense of the consumers. Then the Governor may direct a Commission to issue to report to the Government whether such combination, trust, association or agreement exists."

The scope of the Investigation here then is, to inquire whether or no it has been established that an Association, Combination or Agreement does to-day exist among the Manufacturers of this article, printing paper, and if so, whether that Association or combination is one to unduly enhance the price of that article, or in any other way to unduly promote the advantage of the manufacturers at the expense of the consumers.

We submit to Your Lordship upon the evidence that has been adduced, that the report which your Lordship should make in that respect should be in the affirmative, as to both points of inquiry.

In the first place, with regard to the existence of such an Association or Agreement among the manufacturers, there can be no question. In that respect the case stands conceded. We have the actual document of Agreement or Association. It will be noted that it is not any question of whether all the manufacturers in the Country have entered into the Combination, Association or Agreement, but whether such Combination, Association or Agreement, as is described in the Statute

exists. Here whether all have entered into it or not, it is demonstrated that such a Combination does exist and that a considerable proportion; in fact, I shall argue upon the evidence practically all the producers of this particular class of paper, does exist.

Now, looking at that agreement which is produced, the purposes and objects of it are very apparent. It is an agreement entered into formally and in writing, under date of 21st February, 1900, signed by some twenty-six manufacturers of paper. It is now said that, of these signatories, only twelve have actually made the deposit with the Treasurer which the agreement calls for, that the other fourteen are not recognized by the twelve, as I would understand the testimony of the Secretary, as being members of the Association. As I have pointed out, that seems to us no difference. We established that there does exist in this Country such an Association, Combination or Agreement among manufacturers of paper (the Statute does not say how many manufacturers of paper,) which does unduly enhance the price, or was intended to have that effect.

In the first place, as there has been considerable testimony from gentlemen who are parties to this agreement or arrangement with regard to its objects, as one at any rate, perhaps more than one of the witnesses who were examined before your Lordship three weeks ago seemed to endeavor to persuade the Court that this agreement had for its object rather the keeping down of prices than that of increasing them. Let us look at the terms of the document to ascertain from it the objects of the Association: The agreement witnesseth that the parties form themselves into Association to be called and known as the Paper Manufacturers Association of Canada. Then the document states that the object of this Association, shall be, among other objects: The regulation and maintenance of fair prices of paper. Now, at least, we pause there for a moment. Let me ask the Court what it is, this definite, distinct statement on the face

of the instrument of Agreement, that they are banded together for the maintenance of prices which, will seem fair to them. Of course, it would be out of the question to find any body of men engaged in the manufacture of any commodity stating on the face of an agreement they might enter into, with regard to the price of their output, that their Combination was for the purpose of maintaining prices that were unfair. That would be a thing not supposable. They would be sure to call the price fair which they themselves established. Upon the face of this document then, it is a distinct statement that the object of their Association is the regulation and maintenance of prices. The use of the modifying adjective "fair" with regard to the prices is their own choice of words, is what might seem fair in their eyes without any regard to the interests of the purchaser or consumer, and carries the matter no further than if they had said in so many words: "We combine to maintain prices." And the remaining features of the Agreement suggest the course which they have taken under that Association or Agreement, demonstrate the fact to be that the Association was formed for the sole purpose of maintaining such prices as they will choose to fix. The Secretary Treasurer is, by the fifth paragraph of the Agreement, to advise simultaneously by wire or post as directed by the Association, all members of the Association, all resident or other agents of members of the Association and as far as possible, all travellers, of any changes in the Association prices or terms. It is provided in paragraph six that any resolution adopted at any meeting by a majority of the members then present shall be binding upon all the parties hereto. There is an express covenant by the parties signing that they will conform and abide by any resolution adopted under the provisions of this Article 6. Then finally, they will not quote, accept, book orders for, offer or agree to sell, or sell, the goods covered by the agreement at lower prices or on better terms and conditions than those fixed by the schedule or by any schedule that may be adopted by resolution of the Association under Article 6 in substitution. So that the express covenant of the parties is a covenant of observing, of which is insured by the right and

power to impose a very substantial penalty on anyone who makes breach of it. The express covenant of every signer of this agreement is, that they will not make better terms or lower prices to any purchaser than the prices fixed by the majority. There is finally an express obligation in the agreement each in the penal sum of \$500.00 to the others, that they will strictly adhere to, observe and fulfil all the above agreements and obligations, and all rules, regulation of the prices, discounts etc. which may from time to time be resolved on or adopted by the Association, and provision, as your Lordship will remember from reading other clauses of the Agreement, that upon any breach, the Secretary shall examine into the matter, and if he find that there has been any transgression or violation of the Agreement by any member, he shall fine the accused not less than \$50.00 and not more than \$500.00. So that by rigorous penalties, those manufacturers who have entered into this agreement have bound themselves to each other not merely in honor, not merely by their obligation, but under stress of this heavy pecuniary penalty, that they will be governed by the resolutions of the Majority, and that none of them will sell at a lower figure or on better terms to the purchaser than the majority may direct.

Now, that being the indication to be found in the document itself, of the objects of the Association, let me ask Your Lordship's attention for a moment to the Minutes as demonstrating what those who have banded themselves together under that Agreement have done. Your Lordship will find at the very opening of the Minutes on the first page, that a message is sent to all manufacturers to withdraw all quotations or prices which were then outstanding. Prices are then considered by the body assembled together. After deliberation and consultation, prices are decided on and on page five, terms of payment are adopted and the amount of the deposit of penalty is fixed. Then that having taken place at the outset as the Minutes record, within not long afterwards,—on the 18th April, 1900, within a couple of months of their incorporation that this body is, by resolution, settling, agreeing upon a uniform form of contract which they are adopting and requiring the purchasers or con-

sumers to enter into. They regulate the prices; they regulate the terms and they bind each other not to sell at lower prices or upon better terms to the purchaser, leaving it to each to make the terms more onerous or the prices higher as they may see fit.

Then we have simply the evidence of the document itself, of the proceedings taken by the association, as demonstrating the objects with which the parties entered into the Agreement in question, but we have also some statements by different witnesses on the point to which I very briefly refer. Mr. Barber, called on behalf of the papermakers and himself a manufacturer, says with regard to the objects of the Association, on page nine of his testimony: That the first or original Association of twenty years ago was organized for the purpose of fixing the price on news as has been done recently.

"Q. That was the purpose for which 'the Association was originally formed, as you understand it?"

"A. Yes."

Mr. MacFarlane, of the Canada Paper Company, says with regard to the original organization at page 41, that it was not closely organized, "but 'we would meet and discuss these 'things and they would fall through 'afterwards."

"Q. That was the object primarily 'of your Association?"

"A. It was only one of the objects; 'if the prices were favorable at the 'time, they would not be discussed. 'If they are going down to an unfavorable basis, we would discuss them 'very warmly." That he says, speaking of the organization of 1879, which, he says, was an understanding that we would not sell a certain kind of paper under a certain price. Mr. Barber, with reference to the present Association says, that the old one having fallen pretty much into disuse, the new or present one was only called for when there was excess of supply over demand.

"Q. To prevent the reducing of prices too much?"

"A. You might put it in that shape." This is at page 10 of his testimony.

So that we have both these gentlemen telling us that the purpose of the Association, the necessity for it arose when the price is going down because

supply exceeds demand, and the purpose of the Association is to correct that and to prevent prices reaching an unfavorable basis.

Now, that being the nature of this organization, the purpose of it, as set out upon the document of Association, as demonstrated by the acts of those who met, under that document, in body assembled, and by their record of proceedings, show that their work was that of fixing prices satisfactory to themselves, that being the statement by the men who best know, prominent manufacturers who have been called here, as representative men, of the objects with which they entered into this arrangement, we submit to Your Lordship that it is demonstrated not merely that an Association, Combination or Agreement exists, but that that agreement is upon the statement of the parties to it, and of the document itself, an agreement for the purpose of regulating, for the purpose of maintaining; in other words, for the purpose of keeping up the price of a commodity under which they deal.

Now, if we have established that much, we have taken the first step, and a long step towards the result, which we ask Your Lordship to give in the report to be made to the Government as to this investigation. There is an agreement shown to exist and the purpose of it is shown to be the maintaining or keeping up of the prices of paper. Is it then an agreement to unduly enhance these prices, unduly to promote the advantage of the manufacturers or dealers at the expense of the consumers?

It is shown to be an agreement to enhance the price, to maintain that enhanced price. It is shown to be an agreement to promote the advantage of the manufacturers at the expense of the consumers. All that remains of the Inquiry is, as to whether that enhancing of prices and that promotion of the interests of the manufacturer, the advantage of the manufacturer at the expense of the consumer is an undue thing.

Now, in considering that fact, we have first to look at the position of prices and at the position of the trade at the time this agreement was entered into. To compare the prices and the condi-

tions that governed or obtained in the trade at that time with the prices and conditions which were brought about as the effect of this combination and inquire then whether the raising of the price, and the increase of advantage to the manufacturer at the expense of the consumer was or was not undue. We have it in evidence, and uniformly in evidence corroborated by those who have been called on the other side, that for years prior to the making of this agreement in 1900, the price of this class of paper had been uniformly decreasing. For some ten or twelve years or more, the cost of production had been decreasing. The improvements in machinery, improved facilities for manufacturing, the lessening of expense of raw material caused by the substitution of wood pulp for rags and other circumstances connected with the manufacture of paper that different witnesses, notably Mr. Barber on the other side, have shown to the Court the fact to be indubitable that for ten or eleven years prior to 1900 the price of paper in Canada had been uniformly decreasing. Mr. Ross, the first witness called before your Lordship says so at page 17 of his testimony. He is speaking from an acquaintance practically with the trade for a period of some twenty odd years, I think. He speaks of the fact for some twelve years or more. He has been in business as a publisher for that length of time, and he says, during that time at any rate, the price of paper has been decreasing ever since he has had any acquaintance with it.

Mr. Tarte, at page 23 says the same thing, speaking from a course of experience for some ten years past. The prices for all kinds of paper "had been going down steadily," and he had been buying at a low figure prior to the entering into of the agreement here in question.

Mr. Robertson of the Ottawa Journal speaks in the same line at page 95 of the evidence where he says that the price had gradually been reduced during the year. From his experience it had been declining up to the making of this agreement in February 1900.

Then a very important piece of evidence is afforded us by Mr. Woodruff, a manufacturer from Welland, who was called on the opposite side, and asked, at page 83, the position of the trade before this last Agreement was

signed in 1900. He answers: The trade for the last previous six months had been in a good, healthy state. We considered it so; we were advancing prices right along on it. So there was no necessity for the making of this agreement, by reason of conditions of the trade being in any way unfavorable. Those conditions of trade, were, as the manufacturers themselves testify, prior to the making of this Agreement, such that the trade was in a good, healthy state, as they themselves so considered it. There was no reason or necessity so far as their position was concerned for entering into this agreement in the world. What was the effect of it? The effect was at once made manifest and this is testified to by numerous witnesses and without any contradiction, although the parties who could have corrected it, if there had been any mis-statement upon their part, went into the box on other points in the Inquiry.

I call Your Lordship's attention to that particularly. Here, we have in the first place, Mr. Ross and Mr. Robertson of the Journal Printing Company in Ottawa, testifying as to what took place between them on the one part, representing their newspaper, and the Eddy Company on the other part as represented by Mr. Rowley; and Mr. Rowley was called on the opposite side, examined upon other matters altogether, and not asked one single question with reference to the statements made by Mr. Ross and Mr. Robertson. That circumstance demonstrates, with this evidence before him and before Counsel upon the other side for some three weeks, for a month, or more, prior to Mr. Rowley going into the witness box; that circumstance demonstrates, I say that the statements made by Mr. Ross and Mr. Robertson were absolutely correct and could not be gained. They tell us that the Journal Printing Company had a contract with the Eddy Company for the supply of paper at the rate of \$2.04 per 100 pounds. That was a contract which had been in existence for some little time before January of 1900. It expired at that time, and the question was, as to the renewal of it. Mr. Hall, representing the Eddy Company was content to renew, but stated that they would have to make an increase in price of about 10%. Mr. Ross says on

the second page of his testimony : "They notified us on the expiry of the contract that there would be an increase in the price, and their agent, Mr. Hall stated that the increase would be probably 10%. That would raise the figure from \$2.04 to \$2.24 or \$2.25 per 100." That statement was made, Mr. Ross says, about the first week or just the first week of February, 1900. Mr. Robertson has verified the dates more accurately and says it was on the 14th day of February, 1900. That, Your Lordship will notice is just one week before this Combination is entered into. Now, at that time, this Eddy Company is prepared to enter into a new contract at \$2.24 or \$2.25 per 100; the agreement going into force within one week from that date at the rate of \$2.50.

And the inference, I claim, is irresistible; the increase which they put on the price was 25c additional profit, was an undue enhancement of the price, because of this combination amongst the manufacturers. They were not selling at \$2.25 at a loss; they were prepared to name a figure of 10% increase upon their former contract as a sufficient increase to protect them from loss, insure them a reasonable and proper price under the condition of things which then existed and within seven days they are adding 25c further to the price,—an undue enhancement directly attributable to this agreement which we complain of. They are then willing to renew at \$2.24. That offer they are not willing a week later to carry out when it is accepted by the Journal Printing Company, and they put the reason for their refusal simply and solely upon the fact that this Agreement has been entered into.

At page 121 of Mr. Robertson's testimony, this further occurs :— He says :—At the time of the fire, which took place on the 26th April, 1900, the ruling price, he found, was higher than the \$2.50 which had been fixed by the Association, but at the time the Association was formed, it was not so, because, he says, we had an offer at the time it was formed at a lower rate, and that was jumped up because the Papermakers Association was formed.

"Q. Are you prepared to make that statement, that it was purely because

the Papermakers Association was formed?

"A. Yes sir; the Eddy Company "told us that they would be glad to "make a contract with us, but they "could not, on account of the price of "the Papermakers Association."

Now, no more distinct statement could be made than that, which Mr. Eddy and Mr. Rowley there made to Mr. Robertson, that it is purely and solely by reason of this Association that the price is increased to an extent of 10%. They would be glad to enter into a contract otherwise at \$2.25 as they had offered to do seven days before. But by reason of this Association, and solely by reason of the formation of the Association, that price is enhanced 10% more, and I argue nothing could be more clear than that such enhancement is an undue enhancement, an undue advantage to the manufacturer at the expense of the consumer, when we have the manufacturer himself stating that but for this Association, he would be perfectly content with a lower price. Now, it is not any question of producing at a loss; it is not any question of there being no profit in the lower price, because we have the manufacturer by his silence concede, by his omitting to make any explanation or answer to this testimony. We have him concede that whereas he would have been glad to have entered into a contract at a lower price, he now, solely by reason of this Association, takes advantage of this Association and gets a large, undue, enhancing in the price. I press upon this fact, Your Lordship; that this evidence having been before Counsel on the other side, if they desired to read it,—Mr. Eddy is not called at all; Mr. Rowley is, and he is not asked one word by way of answer to that testimony and it stands uncontradicted that they were willing and glad to have entered into a contract at a lower price and then within one week say that they could not carry out that price, simply and solely because of the formation of this Association.

Then other reasons we offer to Your Lordship are equally significant. With reference to the experience of Mr. Tarte, as detailed in his testimony at the opening of his evidence, page two of the reporter's pageing. He says : That before April of 1900, during

the last three or four years, prices had been going down steadily. "I have been buying in my office," he says, "quantities at prices from \$1.70 to \$1.85, hardly ever 2c." Then in April, when these mills were burnt, he was then getting his paper at a trifle below 2c delivered in any quantity, less 5%, 30 days or four months, but immediately upon there being necessity that he should get paper from other consumers, after the effect of this agreement had had its full force, he was unable to get it any place less than \$3.00 a hundred. He describes at page 18 in the opening of his cross-examination by Mr. White, the position of things prior to the agreement. "I was paying \$2.05 less 5%, 30 days or four months, less, I think \$1200 or \$1500 for some other considerations, which we deducted off the total amount of paper I bought during the year."

That contract was with the Eddy Company, from whom he had been buying for years. He had been paying less than that before. That particular contract had been in force for about two years. He says on page 19: "I bought as low as \$1.70. When that contract was going on, I had bought paper, carloads of papers now and then from different mills at various prices from \$1.70, \$1.80 as far as I remember, to \$2.15." At page four of his evidence he says: "In January, 1900, we bought paper at prices below 2c, and I found out I could have bought for all the money I could have got in the Bank of Montreal, below two cents. When I came to get paper from the mills, I was informed that the Papermakers had joined in to an Association and that the price per carload for my paper would be \$2.50."

Then that being his experience, some increase did take place in the price by reason of this combination. Compare it with that of other witnesses, as I have said, at widely separate points in the country. Mr. Preston, of Brantford, describes in his evidence in Toronto at page 24 of the record, that he had a contract with the Canada Paper Company at \$2.10 per 100. In the month of December or thereabouts, 1899, not certain of the date, there was an advance made to \$2.20. That was before the Association was formed, and that carried him through until quite recently. That

was, he says, both for reams and rolls. That was a price of \$2.20 with 4% off. But immediately after the combination was entered into, that price of \$2.20, 4% deduction, was made \$2.50 for rolls and \$2.75 in the reams.

Now, there is no evidence of any corresponding increase in the cost of production. Here, this man is buying from the Canada Paper Company, paper in reams at \$2.20 with a discount of 4%, and it is immediately hoisted to \$2.75. Is there any corresponding increase in the cost of production? Certainly not. None is pretended. Is it pretended that they were making those sales at \$2.20 at an actual loss? There is no evidence of it. The manager of the Canada Paper Company, with that evidence before him goes into the box, and says not a word about it, confines himself to the wide general effect that free trade would have on the country; talks about reasons for supposing that this combination has had the effect of reducing prices rather than of keeping them up, and never says one word in answer to the finished evidence he was called upon to meet, if it could be met; that whereas he had by his Company immediately prior to this combination, gladly and contentedly supplied the consumer for \$2.20 and now insists on being paid \$2.75.

Mr. Dingman, the proprietor of a newspaper in Stratford gives his experience at page 41 to 45 of his evidence:—"The prices we had been paying for news print just before the Combine came into operation was 2½c. or \$2.25 per 100 pounds, delivered at Stratford. The effect afterwards was to raise the price at first to three cents, and subsequently to \$2.75,—two and three-quarter cents with a discrimination against us in the matter of freight delivery. I investigated the alternative of buying paper from the other side and found that paper could be purchased over there at two quotations, one at \$2.12½ and the other \$2.15, which, with the duty and freight paid, would deliver the paper in Stratford at a trifle under the Combine price, with a discrimination in the matter of freight added." He describes the price from Niagara Falls, N.Y. The price of paper there was \$2.12½ with a duty of 54c; freight 12c., making a total of \$2.78½ per hundred pounds as compar-

ed with about \$2.85 under the combine regulation. So that there was little advantage in favor of the foreign manufacturer of paper as a direct result of the Combine that was entered into here. His statement to Your Lordship is, that that price of \$2.25 which he was paying prior to the Combine was with a discount of 3%. Then it is immediately increased from that figure to \$2.75 with a discrimination in the matter of freight of 10c. additional, or \$2.85.

Then Mr. Atkinson, of the Toronto Star, describes his position. At page 75 of the testimony he says: that in the year 1900, in January his contract expiring, he was making a new contract, and that contract he says: "I closed hurriedly because I was told 'the Association was in process of formation, and the contract was for 'one year at a renewal of the terms of 'the then expiring contract, which 'was at the price of \$2.23 net cash,—'equal to \$2.23.'" This contract, like the one of the Ottawa Journal Printing Co., was immediately preceding the formation of the Association. The paper-maker was perfectly content to enter into a contract at \$2.23 at that time, for exactly the commodity which they were paying a price of \$2.50 forthwith on the combination being formed. The effect is certainly an enhancement of the price, which, under the circumstance, must be considered undue.

And then Mr. Atkinson describes that at page 85 of the Testimony, that that \$2.23 was not at all the lowest price in Canada. "I did not get the 'best price. There were prices much 'lower than that, within a couple of 'months time, so that the \$2.23 is not 'to be taken as a low water mark for 'non-association prices."

Then Mr. Stephenson, of the Chatham Planet, comparing the former contract with the present one tells us on page 87 that his contract expiring in the early part of 1900. He was at that time paying \$2.10 delivered. That was for paper in sheets; at the expiration of it, he was immediately obliged to pay \$2.75 with freight in addition. That, he found by correspondence, which he produced to the Court, was the price he had every where to pay, and that there was in that way an immediate increase from \$2.10 to \$2.75, an increase of 65c. or

practically of 30% upon the cost of the paper to him, without any evidence of a corresponding increase at that time in the cost of production.

If Mr. Graham, of the Montreal "Star," is being supplied, as he tells us, at \$1.90 for a very large amount of paper by the Canada Paper Company, is it not manifest that that is the price, which at the time of entering into the contract at any rate, was one that the Company could afford to make. Mr. Graham tells us with manifest disinclination to give any evidence which would assist the fellow consumers who are not in so fortunate a position as he, with a manifest willingness to protect, so far as the truth will protect, the interests of the manufacturer with whom he has made his contract; that even they did not at the time at all pretend there was any loss in the contract they were entering into. We have Mr. McFarlane's testimony on the same subject. But Mr. McFarlane himself does not pretend to say any more than he or any of the officials pretended to say to Mr. Graham, that at the time he entered into that contract, it was being entered into at any loss. At that time they simply took it as established that the conditions of the trade were such that they could afford to sell at \$1.90 and still make a living profit. Now, is there the slightest evidence before the Court that between April and May of 1899 and February of 1900, in that period of ten months, there had been any increase in the cost of manufacture, any increase in the cost of raw material that would justify an increase in the selling price of paper of 60 cents where it had been \$1.90 before? Is there any pretence for saying that there had been an increase of over 30% in the cost of raw material or in the cost of production? I submit there is not, and I urge, on that circumstance coupled with the other circumstances that I have referred to, that the strong effect of this association is not merely to enhance the price but to enhance it unduly, to enhance it at the expense of the consumer unduly to at least an extent which the consumer is, by this combination, forced to pay.

Then it is well demonstrated by the facts in evidence and the necessary inference to be drawn from them, that

there is a perfectly good understanding between the large combination of the manufacturers in the United States and the dealers in this Country. No actual written agreement; it may be possible no actual verbal agreement, but a perfectly good understanding between the two that neither will invade the territory of the other and that they will, for their mutual advantage, bind together to keep up the prices to the detriment of the consumer. That understanding is evidenced by more than one incident that is deposed to here. As Mr. Tarte tells us at page 7 of his testimony: He telegraphed after the Eddy fire to several American newspapers. "I sent representatives to see them. I was answered by some of them, by the International Paper Company, by the Otis Falls Mills, and one or two other of the largest paper manufacturers in the United States or through New England, that if I wanted to do business, I had to go to the Laurentide, that they were affiliated with them, that there was an association of papermakers and if I wanted paper they would get it for me." Then further in his cross examination at page 24: "I telegraphed to some of the paper mills and their answer did not come from them; their answer came from the Canadian mills here, the Laurentide. I telegraphed to New York International Paper and instead of coming from New York, the answer came from Grand Mere the next day, or from Montreal, or from Ottawa, I think."

Then, when he was recalled on the 4th July at page 112 of his testimony, he says, to Mr. White: "I said the International was to supply us; when it was time to give us quotations, they answered me back that they knew the Laurentide was ready to take my order." Mr. Robertson had an experience of precisely the same sort in Ottawa. He describes how, when they were in straits for paper, at the end of January, 1901, page 117: "We wrote three times to the International asking them, because all these mills directed us to the International, but we got no reply in answer to the three letters we wrote them." He says: "This was at the time of the fire, in April, 1900. We tried to get paper from the American manufacturers. We wrote several;

"we could not get any reply. That would indicate that I could not get paper over there. We wrote two firms in Watertown, which afterwards apparently turned out to be controlled by the International. We wrote three times to the International asking them, because all these mills directed us to the International, but we got no reply in answer to the three letters we wrote them. I mentioned this to Mr. Alger once, and the only reply I got from him was a smile. I asked him the significance of the smile and he said they would not come into Canadian territory and it did not bother the Laurentide Company at that time because they were shipping almost exclusively to the British market."

Now, in New York, Mr. Spicer, a man in authority was called as a witness by my learned friend. He is the manager of the Export News Division of that tremendous organization, and he describes to my learned friend the reason for this incident that Mr. Tarte speaks of. He says: "That gentlemen came to me saying that he had a friend in Montreal desirous of purchasing some paper; he asked me would I communicate with him. Prior to writing the letter, the Eddy fire had taken place in Ottawa; an offer had been made by the Laurentide to secure some of the business, and in talking about their success in securing this business, they named various publishers with whom they had made contracts, and after my contract with Mr. Ridder, after looking over the list I found the gentleman he spoke of was in the list." This is at page 221 of Mr. Spicer's testimony. Mr. Tarte, in his effort to get paper at that time, is getting his friend Mr. Ridder to see if he could get it from the International. The International, by Mr. Spicer, the manager of the Export News Division, is in conversation with the representative of the Laurentide people. That representative tells him of his business affairs, of his success in securing business, and names among other publishers with whom they have made arrangements, Mr. Tarte or Mr. Tarte's paper. Before answering Mr. Tarte's agent or representative, Mr. Spicer, the manager of that division of the International, looks over this list, and seeing that Mr. Tarte's name is

among those with whom the Laurentide are engaging, he replies to Mr. Tarte "Get your paper there."

No clearer evidence, I submit of at least an understanding of that, which one of the New York witnesses very felicitiously characterized as a "gentlemen's agreement" between the paper-makers could exist, than the evidence of this instance, and the fact that in Mr. Tarte's evidence he is forced to obtain paper from foreign countries at a cheaper price. He is simply referred by that gigantic organization there to this very company here and left to the mercy of manufacturers, who put the particulars before the consumers as an excuse for thus increasing their prices.

I intend in the next place, My Lord, to speak of such evidence as we have with regard to the actual cost of manufacture. Now, as to that, I premise that probably no point that could arise in an investigation of this sort could be of greater practical importance: the whole gist of the inquiry being whether the prices which have been established by this organization are prices which mean an undue profit to the manufacturer. The most important element for consideration must be the actual cost of production. Now, that was a subject on which it is manifest from the nature and interest of the case, that it was impossible for those whom I am representing here, to afford to Your Lordship any accurate information. We can give you facts from which you may infer that business men would not sell at a price which would not be some measurable distance in advance of actual cost of production, but from the nature of the case it is impossible that on our side of the investigation we can assist the Court by accurate evidence of cost of production. No so with our friends, the adversary. They have that knowledge within their own breasts. Any one of those gentlemen who are so vitally interested in the Inquiry which the Government has here set on foot, could if they pleased, have afforded to Your Lordship accurate, definite information from their books to show cost of production, and from which Your Lordship could have compared cost of production with cost to consumer, and have deduced at once an

answer to the vital inquiry, whether or not the present prices are unduly large.

Now, that being the case, it is a matter of comment, a matter upon which I desire to comment with such emphasis as I am able, that no one of the witnesses who have gone into the box on behalf of the Papermakers' Association, have given us any evidence of any value as to the cost of production. No one at all has spoken of it with the single exception of Mr. Barber. Some have, as I should show Your Lordship, refused to give information, have deliberately disadvantaged, withheld from the Court that which would be of so much importance if it had been disclosed. But, with the exception of Mr. Barber, no one has spoken directly, and with regard to Mr. Barber's testimony I have many observations that occur to me to make, some of which I will try and present as showing an extraordinary thing, that he of all men, should have been the one selected to testify upon that point.

We had, as Your Lordship will see, from one passage at any rate, if not more, in the evidence of Mr. Tarte, a word or two of indirect testimony as to expense of production; all that we could and that was all that stood before the Court when Mr. Barber went into the box. Mr. Tarte says at page 15 of the evidence, given by him on the first meeting of the Commission, at the foot of the page, that he had been in discussion in this respect with the McArthur house at Joliette, and this is what he says took place:—"A very 'important manufacturer told me 'sometime ago, in Montreal, in the 'presence of one of his employees that 'he was under control, that he had 'made a deposit.—I cannot say whether it is Three or Five hundred dollars, but that he could not under any 'circumstances, sell me paper below 'the ordinary prices, but that he was 'very anxious to get my business, and 'if I could suggest some way for him 'to get out of it, to tell it to him, and 'I said :—(Since one year I have been 'doing all kinds of things) and he suggested to me that he should make us 'a reduction, and giving some advertisement in the columns of *La Patrie* to 'compensate the difference in the 'price, and he told me that his paper 'was costing him something below 'two cents; it was costing him a little

"dearer than before, because not having the pulp, some of the big Mills were trying to keep him down, but, however, if he was allowed by the Association he would think of certain things and he would get out of the Association to take my business." He was pressed to say who it was, and he finally said it was the McArthur house of Joliette,—and he told me "he would consult the Association." So there was that piece of testimony in our favor, that that gentleman had told Mr. Tarte that the actual cost of paper to him was a little under 2c.; something below 2c.

Now, that being all the evidence there was upon the point, and that being given on the 28th of May; on the 3rd July Mr. Barber attends, coming a distance of about 400 miles to Montreal to give testimony, as the first witness called by the Manufacturers' Association in this matter. He comes with a statement prepared, of the cost to him of producing 100 pounds of paper in the different years—1898, 1899 and 1900 to the present time. Now, I do not wish to be understood for a moment,—I do not wish to be misunderstood, and do not wish to be understood for a moment as suggesting that Mr. Barber is not a gentleman who would tell truthfully everything that he stated in the witness box. I am not imputing anything of the sort, in the nature of misrepresentation to him and don't wish to be so understood. But I point out how unsatisfactory evidence of that sort necessarily must be when it takes the shape, as Mr. Barber's statement does, of assigning to the cost of producing 100 pounds of paper, so many cents, not in fractions of a cent at all, but so many cents for wages, so many cents for coal, so many cents for cartage, for felt, for wires, for repairs, for general expenses, aggregating as he does in the year 1898, \$1.94; in 1899, and in the following years \$2.00 and some cents in each case.

That, I submit is a most unsatisfactory kind of statement. Mr. Barber says he made it up from his own private memorandum. It may be from his general books in this sense, and his general books would perhaps not show the whole of these details, although they would necessarily show the volume, the general nature of his business. But he assigns upon his calculation, a round figure, so and so, 20c.

to the 100 pounds; wages 15c.; coal 10c., and other figures in the same way; not in all cases round figures but in nearly every instance, even figures. Now, is that at all satisfactory? I urge that it is not. I urge that we were entitled to have, if Mr. Barber could give it, what the cost of production was with him,—better evidence than that, the evidence of his books themselves, which might have been submitted to the examination of an accountant upon our part, who would show us what amount of profit upon his manufacture Mr. Barber was making, how much upon those books year by year, the average cost of producing 100 pounds of paper was, what the production was compared with the price.

It would have been just as easy for him to give us a statement of that sort, for him to put us in a position to have checked his figures. These figures it is perfectly impossible to check. For these figures we have to take our confidence in Mr. Barber's statement, which is no better in any respect, in that regard, than if Mr. Barber had contented himself with saying in the witness box, without producing any statement at all: "I have estimated and I say that paper costs me to manufacture 'this amount' that he mentions. Now, I call particular attention to that because the gentlemen who were in a position to speak accurately were gentlemen of this city, Mr. McFarlane and Mr. Gillean of the Canada Paper Company, Senator Rolland and Mr. Rowley of the Eddy Company. Not one hint is given by any of them as to the cost of production. It is a most significant circumstance when we find information of that value necessarily within their knowledge and not given to the Court.

It is of peculiar importance for this reason: That Mr. Barber occupies a position of disadvantage in manufacture. Every witness who is called tells us that the men who are making the big money under present prices are the men who produce their own sulphite, their own pulp, and who are now charging high rates because there are so few of them in the country, because they are able to charge scarcity, starvation prices and to exact them from their less fortunate brother manufacturers. Everyone tells us it is they who are making the large profits

on the manufacture of paper to-day. Mr. Barber is not in that position. Mr. Barber has to buy, and possibly for that reason it is Mr. Barber who alone ventures to tell us anything as to the cost of production to him. Now, Mr. Barber is unwilling to name, as Your Lordship will not fail to notice, any minimum price as that at which paper can be manufactured with a profit. I pressed him to do so. On page 12 of his cross-examination, I asked him the statement how low he would put the lowest price at which under the most favorable conditions, prior to this agreement of 1900, paper, news print, could be sold and yet realize to the manufacturer a profit. That he won't state. "You are asking me a question that I don't think I should answer, because I am not in the secrets of either of those large mills that make paper for export as well as for home trade." I pointed out to him that he should be thoroughly cognizant with the secrets of the business.

He says: "I know what it costs me to make my paper. I buy my sulphite, my coal and my ground wood. There are mills in Canada who do not do these things." Now, if we had Mr. Rowley, who represents a company who manufacture their own materials, we should have had the evidence of a man who could say what under these circumstances would have been the cost of manufacturing; I think we could show a much lower price than could Mr. Barber, buying these commodities.

In that connection it is not merely significant; it is important to notice the testimony of Senator Rolland. He says there: "It is only mills who have their supply of ground wood and chemical pulp that can manufacture newspaper at a paying price. Our having to buy these from the manufacturer, we cannot make it pay even at the prices fixed by the market." And for that reason, because he has to pay to the producer of sulphite and ground wood, so large a price, he goes out of the manufacture of news print paper. Mr. Barber has not wholly gone out of it, but Mr. Barber manufactures in a very small way. He tells us so. He goes out of it so far as he can. He devotes himself to other lines of trade, just because having to pay these large prices for raw material, he cannot compete

with those other mills in the manufacture of news print at a profit. His capital invested, only something under \$200,000 at the outside is, as Mr. McFarlane places it, a very small capital comparatively, not anything like the cost of one of the mills of the Canada Paper Company, or anything like the cost or the amount of capital that would be invested in a concern that was of large character, that was turning out news print for a profit, and was in position to manufacture it economically. Then that being the secret of the thing, that being the point of the matter where, as Senator Rolland says, great profit is in the sulphite and in the ground wood, that those three or four manufacturers who make their own, charge the others who have to buy it from them. There is the excuse that it put forward for the high price that is made since this Combination of manufacturers for those articles of raw material. Mr. Rowley is called to explain that. If you will, that is the whole object with which he is put into the box. He represented the Eddy Company, one of the fortunate three or four who manufacture the sulphite and the ground wood. And he seems to put it in his evidence in chief, as the result of providential considerations—low water, and the absence of snow in the woods during the winter and other considerations of that character are attributed to the increased cost of production. But when he comes to be examined: when he speaks first, one would have thought, to hear it, that the very stars in their courses fought against the people who were endeavoring to produce this commodity for the paper manufacturers. When one looks into his cross-examination it simply comes to this: That there being a time when the supply fell short of the demand, those who had the supply took advantage of the situation to put up the prices. No pretence that the cost of production was increased; the cost of production remained as before. But there was a time when the increased demand for paper caused by the war spoken of enabled them to charge a higher price for the amount that they had on hand and they promptly took advantage of the circumstance.

It is simply the paper manufacturers taking advantage of the opportunity to hoist the price to those he sells to.

For himself it costs him no more to get a smaller quantity of material. It costs him no more per thousand feet than it did before; wages have not increased, the cost of wood has not increased, but it is simply an opportunity to exact more from the men who must have that commodity, and to whom he sells. So that the first and main element in the attempted explanation of the increase in price of pulp wood and sulphite, they have failed to explain.

What other particulars are put forward? That sulphur was contraband of war and it was very difficult to obtain and sulphur was, of course, a thing we had to buy. Now, we were rather surprised to hear Mr. Rowley put forth such a consideration as this. It was analagous, if I might say so, to Mr. McFarlane speaking of soda fibre, that his mill used, putting forward an increased cost of bleaching powder. When he came to be cross examined about it, Your Lordship will find he finally said the cost of bleaching powder is but a bagatelle and cuts no figure in the actual cost of producing paper. Now, in the same way that Mr. Rowley put forward the consideration in a strong way that the sulphur was contraband of war; when we came to examine into it, by the evidence of a man who knows, we find that that commodity too is of such trifling importance that it cuts no figure. In the evidence taken in New York of Mr. Dillon, of the Great Northern Paper Company, he being, as he describes to us, the Vice-President of the Great Northern, and for a number of years connected with the manufacture of paper in the United States, under examination as to the extent to which the cost of sulphur in the manufacture of paper, tell us at page 216, after considerable examination about it: That while it would bear some proportion, it would bear no large proportion; and finally asked what proportion of the cost of making paper would be attributable to the cost of sulphur: "I would not consider it an important item, but I might add that the clothing of the sulphite mill and every other article increased in cost." So that the reasons put forward by Mr. Rowley, called for no other purpose than to justify the reasons Mr. Barber had spoken of, as to the cost of fibre. Sulphite and ground wood seem

to fall altogether to the ground.

There has not been any such increased cost as is evident enough by the evidence given by Mr. Spicer of the International Company when examined in New York. He was the man who was last of all in New York, and who was frequently alluded to before going into the box as the man who could testify about all these matters. Mr. Spicer representing the International Company, as I said, the Manager of one great division of their business, was assumed to be perhaps better than any other witness who had been sworn upon this Inquiry, in a position to state accurately such things as we were interested in materially and particularly in knowing. Your Lordship will remember from the evidence as disclosed as to the position of that huge organization, the International of the United States. Formed some two years ago and absorbing practically the whole output of the Eastern or New England States, as they then existed, with a capital of some \$55,000,000 and in a position not merely to control but practically to monopolise the whole manufacturing trade of the Eastern and Northern States. As witnesses, who were examined in New York testified, what we could see without evidence, that the whole trade in paper in that section of the United States is practically limited to the Mills of New England and New York simply because the freight from the West, especially from Mills west of the Mississippi, would be prohibitive upon production and competition; No supply practically for the New York market or for the consumers of the New England States is drawn from any point west of the Alleghanies. And throughout that section of territory, the New England States and New York, the International is the firm practically monopolising the whole of the output of these States. It was so large in its operations, as witnesses testified, that it even controlled from 75% to 80% of the total output of the United States. It now produces from its various mills, some thirty or more in number, fifteen hundred tons per day, and the only competing company is the Great Northern, which went into operation some twelve months ago and which is now turning out two hundred and seventy-five tons a day. These constitute be-

tween them nearly the whole, comparatively, of the output of the United States. The total output being slightly over 2,000 tons per day, these two companies between them actually contributing to that total output of 2,000, or contributing an amount of over 1775 tons.

Now, Mr. Spicer spoke then with authority as the representative of that large organization, went into the witness box in the position, one would presume to tell us accurately something definite to the cost of production. I invite Your Lordship's attention to his cross examination upon that point. He was asked nothing about it in chief. At page 232 and the following two pages, Your Lordship will find the efforts that I made to induce him to state something that would be accurate and definite upon that very important point. He had testified as to a transaction in which he had actually sold to a customer in Canada, paper at the rate of \$2.00 a 100 lbs. f. o. b. at the Mills. I asked him what figure he could have afforded to give the consumer on that sale and make a living profit. He answers: "I would not answer your question of that kind. 'It is a subject a good many people are interested in, to know what we can afford to make paper for, and I would suggest that the best means of obtaining that information is, to become a paper manufacturer.'" A distinct definite statement that he declines to answer. Asked at what figure he could have afforded to sell and yet make a living profit, we have the refusal to say.

There, at all events, is a distinct withholding of information by a gentleman in position to know, by a gentleman qualified to state, by a gentleman called by the Manufacturers' Association to assist their case before Your Lordship. It is not assisting the Court. It is deliberately withholding from the Court the information which would make this report, a report based upon facts, and a report upon which the whole community, the whole manufacturing and consuming community of the country could with confidence rely.

But we have the distinct testimony

of these gentlemen in the United States as well as those witnesses called here as to what ruling prices were in the United States during the year 1900, and I refer very briefly to the testimony of these witnesses upon that point. This same gentleman, Mr. Duffy, tells us that during the year 1900, during the Fall months of 1900, there was a very noticeable advance with them; that prior to the rise which took place as late as October, he he thinks, September, he was purchasing at about \$1.75. Later in the Fall he paid as much as 2c. They had not yet felt the full effect; they did not feel its full effect until the early Spring, but when that rise was felt, the ruling price was about \$1.75 to 2c. a pound, when they had felt the effect of the Combination or of the monopoly to a certain extent. Then he states also; that on the thirtieth day of December last, he made a purchase of 7,000 or 8,000 tons of paper at \$2.15 F. O. B. dock, New York, bought on the thirtieth day of December.

Now, there is one instance, at all events, of a purchase of a very large quantity. A purchase from the International at \$2.15, when in this country the same article is costing every person who purchases it, \$2.50, a very substantial and material difference.

And then we have the evidence of Mr. Tarte on the same occasion as to what he was told on that subject by Mr. Seringeour of New York, who was afterwards called as a witness in this Inquiry. On page 10 and afterwards on page 21 of Mr. Tarte's evidence, he speaks of his interview with Mr. Seringeour. "I asked him," he says, "what were the papers in New York paying. He told me they were selling paper at \$1.70, \$1.80, \$1.85 and \$1.87. He offered me paper at \$1.87 F. O. B., New York." That was in April of the present year. "He offered me paper F. O. B. New York at \$1.87, or delivered in Montreal at my office at \$2.48, duty paid, delivered as I wished. That was for a better grade of paper than the paper I am getting to-day at \$2.50." And then he had more than one interview with him. He says: "That was in the morning he came to see me, and he came back in the afternoon, and he had communicated with the House.

"I told him at that time that some of the Paper Mills in Canada had already offered me prices; two or three of them offered to leave the combine prices and give me paper, or to use some other means to give me paper, so as to secure my business. I told him that. He made up his mind that he would make me an offer for \$1.70, F. O. B. New York, and then adding 17c. for freight and forty-five cents for duty would bring down the paper below \$2.40 per 100, and 5% discount."

Well, now, Canada ought to be able to produce paper as cheaply as the United States, as cheaply as any other country in the world. That, we might say, might appeal to the intelligence of us all, to Your Lordship's knowledge of the conditions that exist throughout the Country without being testified to by any witness, and Mr. Gillen has told us so at pages 96 and 97 of his evidence: "Could it not be said generally either of Canada or the United States, that the one country could, suppose there were nothing to regulate prices more than the natural play of demand and supply, produce more cheaply than the other?"

"A.—Given the same conditions, we ought to be able to produce as cheap.

"Q.—What do you mean by conditions?"

"A.—Supply and demand.

"Q.—Raw material ought to be cheaper here?"

"A.—Yes, fully as cheap.

"Q.—Is it any more expensive to bring a supply of wood to the factory in the United States than in Canada?"

"A.—I think not.

"Q.—There ought then to be no advantage in favor of the United States producer as far as this pulp wood is concerned?"

"A.—Not much.

"Q.—Would there be in respect of any of his other raw material?"

"A.—I think not.

"Q.—Taking it generally, the Canadian manufacturer ought to be able to produce quite as cheaply as the United States?"

"A.—Yes, if we had as large orders, the same size orders."

Now, if that is so, prices ought to be the same under the same conditions, if

they were left to the natural play of supply and demand. Why are they not so? Why, but that a combination exists here amongst the manufacturers, having for its purpose and object the maintaining of prices at a higher figure than the natural effect of the amount of demand upon the supply would cause. No other reason can be assigned, and just to the extent to which competition from the outside is prevented by the duty which the Government imposes, which Parliament imposes upon the importation into this country of paper manufactured outside, just to that extent the consumer is putting that amount of percentage into the pocket of the manufacturer for every hundred pounds of paper he buys. There can be no possible escape from that conclusion unless we show Your Lordship, unless it is shown to the Court, and unless Your Lordship can report in answer to this Commission that conditions vary, that cost of production is greater upon the other side of the line than here. If we find under similar conditions they are able to produce at a lower figure than we can here. Then we are entitled to argue that our Canadian manufacturer can produce at the same figure, and the amount of profit he has is simply increased by the 25% of duty, because but for the existence of that duty he would be on a level with the producer in the United States and would still at the same price realise just the same profit. If the United States producer can make it worth the while of the Canadian consumer to pay the additional freight for the longer haul thereby occasioned, then to that extent the Canadian manufacturer is protected by the geographical conditions surrounding him. To that extent he is entitled to the benefit or to the extent to which he is artificially protected by the imposition of the duty; he is enabled to take that additional amount out of the consumer and put it into his pocket. His cost of production is no greater; there is no reason to enhance the price; the price is unduly enhanced by the effect of this combination taking advantage of the duty which Parliament has imposed. Now, if we find under the existing condition of things, and in face of the price which these manufacturers have created for their commodity; if we find that men who have

to consume can actually import, and do import, and do thereby get their product at a less rate than they have to pay for that product to the mills here, we have clearly and thoroughly established a case of undue enhancement of the price, and the evidence does establish that condition of things.

Take first in that respect the testimony of Mr. Tarte. Mr. Tarte tells us that he was actually in negotiation with a country so far distant as Austria and that he found as a result of those negotiations that he was able to lay down here in Montreal, paper manufactured in Austria, at a price a trifle lower, after paying cost of carriage half around the world, than the combine was charging him.

It was not a sufficient saving to compensate for the additional risks of the contract, with a basis of supply so extremely far distant, and where any vicissitudes of carriage might occur in transmission of the wares, would possibly lead, if any unforeseen accident took place, to a cessation of supply at any critical moment, but it was, so far as the actual money question was concerned, a difference of a few cents in favor of the Austrian producer.

Then an incident occurs, or two incidents in that connection which are of utmost significance. This gentleman, who I have mentioned, Mr. Scrimgeour, representing the Manufacturers' Paper Company, of New York, came to Canada on the 30th of April and 1st of May of the present year. He knew perfectly of the existence of a combination among the manufacturers in this Country. He knew its effect; he knew its prices and he came here prepared to undersell, if he could obtain anyone who would buy. Mr. Tarte testified in regard to his interview with Mr. Scrimgeour. Mr. Atkinson of the Star, Toronto, also testified, and finally, a fortnight since, Mr. Scrimgeour went into the box in New York and testified in exact accord with what they said. We have the three men concurring exactly in their narrative or what took place.

Mr. Atkinson details what took place between them. He says: "It was the same as used in the New York 'Herald,' Sunday edition, a 'much better class of paper, I consider, than any paper being used in

"Canada, that I had seen." And as we have had testified to us by Senator Rolland: "The paper used in the 'New York 'Herald' is a better class of paper than any used in Canada."

Now, that paper Mr. Atkinson has produced to him by Mr. Scrimgeour as a sample. "The agent," he says, "offered me in my office to supply me 'with paper at \$1.80 f. o. b. near Watertown, with a freight rate of '25 cts., making the paper delivered in 'our office, without duty, \$2.01 per 100 'pounds." That, of course, with the duty on was really not much. But without the duty there would be a very considerable reduction.

Mr. Scrimgeour asked about both these circumstances says: "Certainly, 'they took place exactly as narrated."

His offer to Mr. Tarte was \$1.85 in the first place; his offer to Mr. Atkinson was \$1.80. He says he did that because the freight to Toronto was five cents more than to Montreal. Now, see what that signifies when you isolate the element of duty: \$1.85 in New York with 17c. freight to Montreal, \$2.02; \$1.80 in Toronto with 21c. freight, or \$2.01. This gentlemen here representing the Manufacturers' Paper Company, comes to Canada to get orders, makes offers of contracts, which, if there were no duty in the way, would enable the consumer here to buy his commodity at \$2.01 or \$2.02 per 100 pounds instead of \$2.50. The duty is just 25%; that is added on there and it is extra profit to the manufacturer. The cost of production in either case is under the \$2.01 or \$2.02 at which the commodity is offered. Cost of production plus the living profit to the manufacturer amounts to \$2.01 or \$2.02, the additional 50 cts. is simply duty, is simply enhanced profit which goes into the pocket of the manufacturer out of the pocket of the consumer.

Now, these offers being made by Mr. Scrimgeour, he was called as it were, to explain why he had made them. Not that they were in any way erroneously stated by Mr. Tarte and Mr. Atkinson, but in the effort to belittle their importance, and Your Lordship will find in the evidence of the first witness called in New York, on page 147, he says; He came here on the 30th April to see Mr. Tarte, and offered him news print paper, quoting him \$1.85 f. o. b. cars at the mills net. He

made a calculation, he says, as to what it would cost him off the cars in Montreal, and it would be \$2.48 per 100 pounds. Coming here with that offer, he knew, he says, at page 153, that the price established by the combination in Canada was \$2.50. "Was that a 'factor,' I asked him, 'with you in 'making your quotation?'"

"A.—Yes.

"Q.—You designed a quotation 'which would be practically equivalent, or a few cents under.

"A.—Yes.

"Q.—I do not understand you that 'the sale at these figures would have 'been any less?

"A.—No sir. It would have been a 'loss in the sense that we might have 'got more money here for the same 'paper."

Just the question Your Lordship put this morning to Mr. Graham: "Not actually a loss, comparing the 'price of sale and production."

"Q.—Are you in a position to say '(at the foot of page 155) whether, had 'that contract been made and carried 'out, the manufacturer would have 'sold at a loss, as compared with his 'cost of production?'"

"A.—He probably would have made 'a profit on it."

Now, that was a better quality of paper, substantially a better quality of paper than the paper used by the leading newspapers in this Country. He was prepared to carry out that quotation.

I asked him on page 156: "Were 'you prepared to carry out your quotation?"

"A.—I was prepared to make contracts with them.

"Q.—At that figure?

"A.—Yes.

"Q.—And to any extent they desired within reasonable limits?

"A.—Yes, within reasonable limits.

"Q.—What quality of paper was 'that?"

"A.—It was ordinary newspaper," which he called No. 2 News in the grading of the United States.

Then I showed him a copy I happened to have with me of the Toronto Globe of the day before, and asked him its grade of paper. He says: "That would grade as an inferior 'quality of No. 2; it would be below 'his No. 2; it would pass as No. 2, he 'says, but a low grade of No. 2.

"Q.—Inferior to the quality of 'paper you were quoting on.

"A.—Yes." Then, going on, about the comparison of the grades he says on page 161: "The quality of the 'Globe would hardly sell in this country at all for newspaper purposes.

"Q.—Suppose you did find a customer willing to take it, what would you 'say you would offer to sell that at, 'how much under the other grade, 'such as you were quoting?

"A.—Probably 5c. a hundred. That 'is, 5c. a 100 under their No. 2.

"Q.—Why is it inferior? What is there about it that makes it inferior?

"A.—It is rough and coarse."

Then he says on page 169, having been re-examined by Mr. White as to the motives that led him to come into Canada, which were, I might say, to counteract the demonstration that he apprehended the Canadian manufacturers might indulge in against the export trade to the Old Country; to counteract that he came with those quotations, and, as I have read to Your Lordship, perfectly prepared to make contracts, and finally after having been re-examined on that point, to make the matter clear, a good deal of questions were asked him at page 169 by me: "I was prepared to make contracts in Canada, but at the prices I 'was quoting, I felt sure of the fact 'that my quotations would not be 'accepted."

So that Mr. Spicer is quite willing to continue to supply the consumer of this country, paper of a better quality than the paper that the manufacturers here are charging \$2.50 for. Mr. Spicer is perfectly prepared on behalf of the International to supply at 2c. at their Mills at Corinth. Of course, the freight and the duty added, make the cost of that to the consumer here slightly more than combination prices, but the cost of production is the same. We have the same fact, that the producer here is able to produce his 100 pounds of paper at such a figure as will net him living profits; then to his 2c. is added 50c. by virtue of this combination he has entered into.

Now, that, we urge, is plain evidence of an undue enhancing of the price as the result of this combination.

And we have not merely that undue enhancing of the price by effect of the combination, but we have other circumstances of disadvantage to the consumer, of advantage unto the manufacturer, unduly promoted by the Association, which equally is obnoxious to the law. When the period of credit, the ruling period prior to the formation of this Association was four months, by this combination, by the terms which they imposed on the consumer, that period of credit is shortened to three months,—a certain element of advantage to the manufacturer as against the consumer. The right to return waste is an important consideration which the Association has destroyed. That right to return waste was one which formed a feature of all contracts when regulated by the law of supply and demand. That right, Mr. Scrimgeour said, the manufacturers of the United States freely conceded. Not, it is true, at the same price at which they sold; at a reduced figure, because the material can be utilised as stock.

Then, in that connection, there is a further circumstance of the equalization points that this Association has established, and with regard to which, just one word. It is testified to by Mr. Barber at page 28, and Your Lordship no doubt understands the effect of it, so that I will be very brief about it. For some reason the Association establishes points, they say, because otherwise wholesale buyers who buy direct from them and sell to the same consumer would not have any advantage over the consumer who bought from a certain point with regard to which they charge a uniform rate of freight and the consumer who does not happen to live at these points has to pay the additional freight. As a result of that, Mr. Dingman tells us at page 91 of his evidence, and Mr. Stephenson at page 139 of his, that they who happen to live in Chatham and Stratford respectively have to pay a difference of freight, 10c. or 12c. more for their paper than otherwise they would have had to pay. The establishing of these points is a perfectly arbitrary thing by the Association; a thing with regard to which no justification can be made as to the geographical position of any particular point.

They simply sell such places as they please and say: "This place shall be, 'what we call, an equalization point, 'and any others shall pay the additional 'freight. Mr. Stephenson expostulates, 'and in vain." By reference to the correspondence which Your Lordship will find exhibited in his testimony, will indicate the efforts he made to get his town put on an equality with the town of Windsor, sixty miles further away where the consumer had the advantage of the difference in freight.

They established certain equalization points and by effect of that regulation they make the consumers who don't happen to live at these few points so established pay an extra 10c. or 15c. per 100 pounds, to the advantage of some other person. That is a circumstance of advantage; that is a circumstance of disadvantage to the consumer, established, promoted and maintained by this Organization, which is undue, which is one of the things the Statute intended should not be, and which I ask Your Lordship to take into consideration when framing your report.

Now, just one other circumstance in connection with the importation into this country of paper, is one of specially particular importance.

I have not seen the Commission which is issued here, but from the discussion of its terms which I find spread upon the notes at the meeting in Toronto, when I was not present, I understand the scope to extend to all manner of printing paper. Now, a class of printing paper of very great importance to a large body of consumers in the country is "book print." The class of paper used, not for ordinary newspaper printing, but for job printing, for printing of various sorts in general newspaper offices, not necessarily the production of books, but a superior or better quality of paper, ordinarily referred to as "book print."

It deserves some notice for this reason, from the evidence in regard to that, that the men who require it, import it to-day because it is cheaper to import it. Mr. Preston, at page 34 says: "We buy ourselves, a considerable quantity from the States, paying 25% and 35% duty. That we

"never did until the last year or so, "That is paper for job printing, book papers.

"Q.—Can you bring it in to advantage in competition with the paper manufacturers here?

"A.—Yes."

Then, Mr. Stephenson also imports his book print. At page 92 he says; "We are buying our jobbing papers 'largely outside the Country; we are 'buying in England and also in the 'States, and really I am not familiar 'with market prices of paper in Canada as perhaps as much as I should 'be, as I bought very little paper in 'Canada for the last year and a half 'in consequence of the increase in 'price."

Now, we have their evidence, that so far as that class of printing paper is concerned, the effect of the Combine is that they simply import it, paying the duty, standing the loss and being simply that much out of pocket rather than submit, in preference, as a matter of business and financial expediency, in preference to paying the price that the Combine has established.

There is just one other circumstance to which I wish to advert for a moment and then I have finished.

It is in evidence here that since this Order-in-Council was passed, since public attention was directed to this matter, and since the appointment of Your Lordship as Commissioner to investigate, that there had been a striking reduction by this Association in its price.

We find in the Minutes of the Association under date tenth May, 1901, a resolution reducing the price of news print to \$2.37½ per 100. We find the evidence, before we had the minutes, of the different gentlemen who had been made acquainted with that reduction stating in their testimony,—Mr. Tarte in the first place, at page 17: "A very few days ago, since the Inquiry was started, I have been offered paper, since the Combine price 'has gone down, since Saturday a 'week ago," on the 28th May. He says: "The Combine price is \$2.37½. "I can get any terms I like. I can get 'three months, and we can get re-'newals for that. That is since three 'weeks."

"Q.—That is since this Inquiry?

"A.—Well, I don't know"

Mr. Young speaks of this at page 9 of his testimony: "The last price is "\$2.37½ with 3% off, 30 days, in car-'loads. Previous to that it was 12½ 'higher."

Mr. Preston produces as exhibit P-10 at page 29, a letter from the Canada Paper Company, dated the eleventh May, the day after this entry in the Minutes appears, in which they tell him they are pleased to say they are able to make a reduction on the price, on the car now on order, making the price now 2½c, usual terms and conditions. Trusting this will not be unappreciated, etc.

Now, what is the significance of that circumstance? We think of the very greatest. Is there any corresponding decrease in the cost of production? Not one tittle of evidence of it. Mr. Barber goes into the box and tells us, according to his figures for this very year, no decrease of cost of production indicated by it, but May 1st, 1901, it is costing him, according to his evidence, \$2.15 to make 100 pounds of paper. He is paying \$36 a ton for his sulphite. Prices are maintained so far as his raw material is concerned, but without any drop in the cost of production. There is a drop of that substantial amount ordered by this association. Why? Why, but that public attention was directed to their doings. Why, but that they sought, if they could, to temper the fact upon their organization or upon their price, of the blow they received when this Commission was granted. We cannot but argue, had this Inquiry not been directed, there would be no reduction in price. Similarly, I argue that upon the report which Your Lordship makes upon this evidence, everything depends, as to the price this Association will put upon the unfortunate purchaser. The purchaser is at their mercy. They control the market. Although there are mills outside their Association, the price they fix is, as witnesses say, the price that regulates, and with this Association in control of the market, the purchaser is helpless; the purchaser is at their mercy, and must pay and return to the old figure of \$2.50, if Your Lordship reports that the present enhancing of the price is not undue. Just as if Your Lordship is in favor of the Association they may a month or a week later increase

the price arbitrarily to 3c. or 3½c. or any other figure they please.

They are limited by the extent of the duty which is imposed. They can go just the extent of that duty beyond the cost of production here or in the United States. If they go too far beyond it, they, of course, will make it worth the consumer's while to pay that duty and import his paper from the United States, but so long as they keep within the limits, so long as they do not, by their regulations, put into

their pockets, more extra profit than the amount of duty that is imposed, the purchaser is helpless in their hands, and we point to that circumstance made perfectly arbitrarily as evidence that with the same freedom wherewith they reduced the price themselves, they can increase it again if they desire, either resorting to the old figure or a higher one, if they think they can do it with safety.

With this I will leave the case in Your Lordship's hands.



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